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62D CONGRESS, 3d Session | HOUSE OF REPRESENTATIVES | DOCUMENT No. 1304

MEMORIAL

OF THE

YAKIMA TRIBE OF INDIANS

PROTESTING AGAINST THE PASSAGE OF SENATE BILL 6693, RELATING TO THE DISTRIBUTION OF WATER FOR IRRIGATION PURPOSES

PRESENTED BY MR. STEPHENS OF TEXAS

JANUARY 25, 1913.—Ordered to be printed

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CONGRESS OF THE UNITED STATES.
IN THE HOUSE OF REPRESENTATIVES,
January 25, 1913.

Ordered, That a memorial of the Yakima Tribe of Indians against the passage of S. 6693, relating to the distribution of water for irrigation purposes, be printed as a House document.

Attest:

SOUTH TRIMBLE, *Clerk.*

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MEMORIAL OF THE YAKIMA TRIBE OF INDIANS.

YAKIMA INDIAN RESERVATION, WASH.,
June 8, 1912.

Hon. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives, Washington, D. C.

OUR FRIEND: In the name of our tribe of Yakima Indians we protest against Senate bill 6693. It is grossly unjust, depriving us of water rights which are ours by all that is equity between man and man.

Under date April 6, 1911, we petition Indian commissioner to build Wapato project under terms we think just. We want you to see this petition. Senator Jones has copy of this petition, and we [are] sorry he did not make his bill right.

We have two canals on reservation, one built 1896–97, this other built 1903. This last one is now called "Wapato project." Both are built with our tribal money.

In 1906 Secretary Hitchcock divide water in Yakima River and give us 147 cubic feet and give Sunnyside 650 feet, leaving several miles of our new ditch dry and not enough to water good the 20,000 acres watered by our ditches.

We ask if this is right?

Our riparian rights are older than those of the white man. This reservation we were permitted to hold when the Government took all our other land. Water is life and belongs to the earth. Our land is poor without water. The Government has set still and let our water be stolen, and now the Reclamation Service cinch us tight if Jones bill 6693 become law. The Reclamation Service talk two ways; it said water under Tieton project only cost $60 or $63 acre, but it cost $93 acre. We understand this is true with other projects. Poor people bought land for little homes under Tieton Canal, and now have to sell cheap or loose all because of high cost water. This will be same with Indian if Jones bill is made law. White man is better farmer than Indian. Indian only understands horses and cattle. Reclamation make high cost water, high cost drainage; Indian can not pay, and land be sold from him. This is what white man want.

This Jones bill 6693 is blind talk. It says give Indian free storage water for 32,000 acres. This is not true. As we tell you we have 30,000 acres now watered, and this 30,000 are included in the 32,000 acres. This leaves only 2,000 acres free storage water. This is not right. It is stealing from the poor Indian. We do not want this done. The water rights to this 20,000 belong to the land because used long time and it can not be taken away. We own half of Yakima River and all water in reservation, but we are not protected in any rights.

On Ahtanum River divide of our reservation where white man have most land, the Secretary of the Interior gives three-fourths of water to white man. Now, when red man have most land to water, he gives nearly all water to white man. This was done and we could not help ourselves. We want only what is right. God wants the white man and the red man to live in peace. We try hard to do right and obey the white man's laws. We want you to help us.

Our friend in Congress introduced "House joint resolution 250" for Attorney General to settle our water rights. This is good, but Secretary Interior hold up this resolution and try to make Jones bill 6693 law, so Reclamation will own all water and have us flat. We want you to stop Jones bill and make law the resolution 250. Then Attorney General will settle all justly. If this is not done we are bringing suit in United States court to settle our water rights. We want the white man to be honest and treat us right. Our words are done.

Our friend, help us. We want to hear from you.

Your friends,

(Signed) We-yal-lup Wa-ya-ci-ka (his x mark),
Chief Judge of the Yakima Tribal Courts,
Clan Chief of the Ahtanum.

(Signed) Louis Mann,
Corresponding Secretary of the [*Indian*] *Councils.*

Washington, D. C., *January 24, 1913.*

Hon. John H. Stephens,
Chairman Committee on Indian Affairs,
House of Representatives.

Sir: We request your support of the proposition to secure legislation directing the Attorney General of the United States to institute suit to determine the right of the Yakima Tribe of Indians, Washington, to the use of the water of Yakima River and Ahtanum Creek, Wash., for irrigation of their lands.

The Yakima Indians have appealed to your committee to favor legislation to adjudicate their right to water for irrigation, and the Attorney General is friendly to their wishes, although he defers to the Secretary of the Interior, who has immediate charge of the Indians. The Secretary of the Interior made a report to your committee on June 13, 1912 in considering House joint resolution 250, and refused to accede to the requests of the Indians, by limiting a free water right to 20 acres of irrigable land, less than one-half of which is a prior right to the running river water.

The title of the Yakima Indians to the reservation in question was secured by treaty June 9, 1855 (12 Stat., 951), ratified by the Senate March 8, 1859, and proclaimed April 18, 1859.

The reservation was intended to be the permanent home of these Indians, as plainly stated in the treaty.

The bill (S. 6693) and the amendment to the Indian appropriation act, introduced by Senator Jones on January 21, 1913, both contemplate giving these Indians 400 cubic feet of water per second, estimated to be sufficient for 32,000 acres of land. This proposed grant

of water includes 147 second-feet of running river water heretofore reserved for the Yakima lands, while it is proposed to reserve the remaining 253 second-feet out of the stored waters, as authorized by the legislation now pending.

The Yakima Indians have not slept upon their rights in this matter. On February 19, 1903, the agent in charge of the Yakimas filed notice of appropriation of water by the Indians for 1,000 second-feet, which is believed to be less than one-half of the low-water flow of the Yakima River.

The Yakimas claim they are now using water for 30,000 acres, equivalent to 375 cubic feet per second. It seems evident that if the Indians had not been retarded by the Reclamation Service and limited by the Government in the recent past, they would no doubt at this time be making beneficial use of twice that amount of water. The Yakimas have been reduced almost to a starvation basis, if we are correctly informed, while at the same time a proposition is submitted to them by the Government which is intended to limit the water supply, and to which they will not consent.

It seems reasonable that by reason of prior appropriation and riparian right the Yakimas are entitled to about 1,000 cubic feet of water per second, being 600 cubic feet more than the pending legislation proposes to grant to them free of storage charges. It has been estimated that 1 cubic foot of water per second is worth $8,000. so that the loss of 600 cubic feet per second would amount to $4,800,000, which will represent the loss in water right to the Yakimas in event the pending legislation is adopted. Furthermore, it is proposed to limit the Yakimas to 147 second-feet per second of running river water, the balance of 400 second-feet proposed by the legislation to be from stored water, which right is secondary to the right to the running water of the streams.

The Yakima Indians are opposing the pending legislation limiting their free water right to 400 cubic feet per second of time, and pleading that their right to the waters within and bordering upon their reservation shall not be determined by arbitrary rule of the Secretary of the Interior, and that their claim to an increased amount of water shall be determined in an orderly manner by litigation in the courts of the land. We submit that the Indians are entitled to have their right adjudicated by due process of law, which has been stated to be—

> An orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard and to defend, enforce, and protect his rights. (Cyc., vol. 8, p. 1082.)

The constitutional limitations upon the Federal Government extend to all proceedings, whether legislative, judicial, administrative, or executive (ibid., p. 1083); and this right extends to all natural persons (ibid., pp. 1085–1085), and Indians are included in this constitutional guaranty. (Choate *v.* Trapp, 224 U. S., 685.)

The highest courts of the land support the contentions of the Yakimas in this matter. The United States Supreme Court, in 1908, affirmed the decision of the United States circuit court of appeals in a case affecting water rights within Fort Belknap Indian Reservation, Mont., and said:

> In conclusion, we are of opinion that the court below did not err in holding that "when the Indians made the treaty granting rights to the United States they reserved the right to use the waters of Milk River, at least to an extent

reasonably necessary to irrigate their lands. The right so reserved continues to exist against the United States and its grantees, as well as against the State and its grantees. (Winter *v.* U. S., 207 U. S., 564.)

The United States circuit court of appeals, in 1908, confirmed an opinion of the lower court which we commend to your thoughtful consideration:

> Manifestly the Indians can not be expected to acquire water rights to any considerable extent through prior appropriation, because they are not far enough advanced in the art of agriculture to reduce the water to a continuous use, and the water of the public streams that they shall finally need depends largely upon their progress in this art. The Government, however, being their guardian has a most important trust to perform in this relation—that is, so to conserve the waters of such streams as traverse or border the reserve as to supply the Indians fully in their probable or, I may say, even possible future needs when they have ultimately secured their allotments in severalty. (Conrad Investment Co., 161 Fed., 829.)

It is the policy of the Government to allot each Indian sufficient land upon which a home may be established. We find that the Reclamation Service determines 40 acres as a minimum "farm unit" for settlers under the Sunnyside and Tieton units, which embrace lands similar to those belonging to the Yakima Indians which it is proposed to irrigate (Tenth Annual Report Reclamation Service), and water sufficient for 160 acres will be granted private landowners. The Yakima Indians are limited to 20 acres, with water right from their own reservation, notwithstanding a vested right by prior appropriation and riparian right.

There is a growing sentiment that Indians should have the benefit of protection by the courts. The Mohonk conference of friends of the Indian, held at Mohonk Lake, N. Y., October 25, 1912, adopted as a part of its platform a clause which reads:

> In providing water for irrigation of the lands of the Yakima and other Indian tribes the Government is in duty bound to protect their vested and treaty rights to as full an extent as would be done in cases between citizens. We recommend that, whenever practicable, proceedings should be instituted by the Government to procure a judicial determination of the Indian rights.

We trust that your committee will make a thorough investigation of the rights of the Yakima Indians pertaining to the irrigation of their lands and conclude that these rights should receive consideration by the court, unless it should be conceded that each allottee shall be entitled to not less than water sufficient for 40 acres of his allotment.

Very respectfully submitted.

S. M. Brosius,
Agent Indian Rights Association.

Department of Justice,
Washington, D. C., April 18, 1912.

Hon. J. H. Stephens,
Chairman Committee on Indian Affairs,
House of Representatives.

Sir: I have your letter of the 9th instant in which you request a report from this department upon House joint resolution 250, for the protection of the water rights of the Pima and Yakima Indians.

In reply I will say, in the first place, that the resolution appears to be unnecessary. The Attorney General, I believe, is already

vested with ample authority to institute and maintain suits such as those to which the resolution refers; and this department is at all times ready, and indeed eager, to protect the interests of the Indians, so far as the limited funds placed at its disposal will permit it to do so.

The needs of the Pima and Yakima Indians with respect to the adjudication of their water rights have for some time past been under consideration here and by the Interior Department, and this department stands ready to act promptly, so soon as it shall have received final advices and recommendations from the Department of the Interior.

In regard to that portion of the resolution which provides for a right of appeal to the Supreme Court of the United States, I would suggest, first, that the provision is somewhat indefinite; and, secondly, that under the existing statutes appeals may be taken in suits brought by the United States to the circuit court of appeals and thence to the Supreme Court when the matter in controversy before the latter tribunal exceeds $1,000, exclusive of costs.

Respectfully, for the Attorney General.

ERNEST KNABEL,
Assistant Attorney General.

YAKIMA WATER RIGHTS—THE CONTENTION OF THE INDIANS.

It is claimed for the Yakimas of Washington that they were the first settlers, their right to the reservation lands being confirmed by the treaty of 1855, negotiated by Gov. Stevens of the then Territory of Washington. The treaty contemplated the civilization of the Indians by providing (sec. 2) that they should settle on the lands within a year; they were granted (sec. 3) exclusive right to take fish in all streams running through or bordering on the reservation; provision was made (sec. 4) for breaking up and fencing farms, building houses for them, establishing agricultural and industrial (sec. 5) schools, and employing workmen to teach the various trades; a flouring mill was to be established, and land plowed and fenced for farming purposes, and (sec. 6) the Indians located in permanent homes.

Irrigation is a necessary requisite to farming in the Yakima country, and the Yakimas have established by use of their own funds an irrigation system to supply water from the streams to which they have a prior right, covering 80,000 acres. It is claimed for them that they are entitled to the normal flow of the waters within the reservation for irrigation, and no doubt their claim for water from the streams bordering upon their lands is well founded.

It is believed that the statutes of the State are not binding upon the Indians nor the Government affecting the Indian's water rights. The United States Supreme Court affirmed a decision rendered by the United States circuit court of appeals in 1908 relating to water for irrigation of Fort Belknap Indian Reservation lands in Mantana, in which it was held:

In conclusion, we are of opinion that the court below did not err in holding that "when the Indians made the treaty granting rights to the United States they reserved the right to use the waters of Milk River at least to an extent

reasonably necessary to irrigate their lands. The right so reserved continues to exist against the United States and its grantees, as well as against the State and its grantees." (Winter *v.* U. S., 207 U. S., 564.)

In confirming the decree of the lower court the United States Supreme Court relied exclusively upon the terms of the agreement between the Indians and the Government by which the reservation was set apart for the permanent home of the tribe, by means of which they were to become self-supporting "* * * as a pastoral and agricultural people and educate their children in the paths of civilization."

As showing that the Indians can not be expected to immediately make the most beneficial use of the water to which they are entitled for irrigation and that they should not suffer by reason of this, a case in point is found in the decision of the court in the action of the United States against the Conrad Investment Co., confirmed by the United States court of appeals in 1908 (161 Fed., 829). The court said:

> Manifestly the Indians can not be expected to acquire water rights to any considerable extent through prior appropriation, because they are not far enough advanced in the art of agriculture to reduce the water to a continuous use, and the water of the public streams that they shall finally need depends largely upon their progress in this art. The Government, however, being their guardian, has a most important trust to perform in this relation—that is, so to conserve the waters of such streams as traverse or border the reserve as to supply the Indians fully in their probable, or, I may say, even possible future needs, when they have ultimately secured their allotments in severalty.

As indicative of what a judicial determination of the Yakima water rights would be, we submit that the terms of the Yakima treaty are more favorable to their tribe than the treaties to which the decisions quoted refer. From this we may confidently conclude that the prior right through treaty of the Yakimas to the running water of the streams within and bordering on their reservations is well established.

Notwithstanding the apparent equities and the favorable decisions of the courts supporting the claims of the Yakimas, the United States Reclamation Service refers to the Yakima claims as being vague claims.

These Indians complain most bitterly of the injustice of denying to them the use of sufficient water for irrigation of their lands. Many of the Indian farms have become barren and the allottees destitute. At the time of my recent visit to the reservation influential tribesmen importuned that they might be allowed water for irrigation of lands which they have for years cultivated and by which they have supported themselves and families.

It has been shown that in the settlement of contesting claimants for water the Yakimas have not been treated fairly. To illustrate: The adjustment of the contentions under the Sunnyside unit, or project, the reports of the Reclamation Service show that the settlers were diverting 625 second-feet and the Yakimas within the reservation 269 second-feet of water, although the Indians claim a far greater diversion; the canals of the settlers under the Sunnyside embraced 60,000 acres, while the reservation canals covered 80,000 acres (the area could have been enlarged to include 170,000 acres of irrigable land). The settlers had filed on 1,050 second-feet and the Yakimas on 1,000 second-feet. From this we deduce that the

Indians should have been awarded one-third more water than the settlers under the Sunnyside canals on the basis of actual capacity of works and use of water independently of the claim of prior right under treaty.

The Yakimas were further harrassed by reason of a temporary injunction issued out of the State courts of Washington prohibiting them from using over 147 second-feet of water, estimated to be sufficient for irrigation of 11,760 acres.

Before a trial of the rights involved in the injunction proceeding the Secretary of the Interior, on March 27, 1906, approved a schedule of the Reclamation Service limiting the Indians to 147 second-feet, as claimed by the settlers outside the reservation who were prosecuting the injunction. The injunction was then abandoned. The net results of this proceeding were, that while the Indians should have been awarded one-third more water by comparison of canals installed and beneficial use aside from treaty rights, they were given less than one-fourth as much as was granted the settlers.

It should be borne in mind in this connection that the injunction proceedings in the State courts were illegal, since they were without jurisdiction in the case.

The injustice of the award of water in the foregoing instance is tersely stated in a protest by the Indians against legislation now pending which proposes to charge the Yakimas for water in excess of a quantity sufficient for 32,000 acres:

In 1906 Secretary Hitchcock divide water in Yakima River and give us 147 cubic feet and give Sunnyside Canal 650 feet, leaving several miles of our new ditch dry, and not enough to water good the 30,000 acres watered by our ditches. We ask if this is right?

Our riparian rights are older than those of the white man. This reservation we were permitted to hold when the Government took all our other land. Water is life and belongs to the earth. Our land is poor without water. The Government has set still and let our water be stolen, and now the Reclamation Service cinch us tight if Jones bill 6693 become law.

On Ahtanum River divide of our reservation, where white man have most land, the Secretary of Interior gives three-fourths of water to white man. Now, when red man have most land to water, he gives nearly all water to white man. This was done, and we could not help ourselves. We want only what is right. God wants the white man and the red man to live in peace. We try hard to do right and obey the white man's laws. We want you to help us. We want the white man to be honest and treat us right. Our words are done.

By the act of 1904 it was proposed that allottees should relinquish all land, excepting 20 acres, for which a free water right would be given. This the Yakimas refused to do, believing that they were entitled to a very much larger acreage by reason of prior appropriation, through construction of canals, and by riparian rights, which, as shown, are upheld by the courts in other cases.

The legislation now pending in Congress (S. 6693), which has the approval of the Secretary of the Interior, provides for the construction of a reservoir at an expenditure of $1,800,000. This measure limits the amount of free-storage water for the Yakima Indians to 32,000 acres, which is about the acreage the Yakimas claim they are now making beneficial use of. One hundred and twenty thousand acres of Yakima Reservation lands are included in this project, so that if the Indians secured water for the remaining 88,000 acres allotted they must pay for it. The Yakimas claim right to run-

ning river water. The pending legislation provides that the excess over 147 second-feet shall be from storage, which is secondary in right of use to the river water. The Commissioner of Indian Affairs favored the contention of the Yakimas, but was overruled.

In 1911 the Government advertised for bids for constructing necessary works for irrigating the 120,000 acres of Yakima lands. A bid of $250,000 was rejected on the theory that it was too high and the work could be done by the Interior Department for a less sum. As we have stated, the proposition now is to appropriate $1,800,000 for this purpose, which shall be reimbursable from the 120,000 acres, excepting the free storage for 32,000 acres. The legislation has been temporarily defeated and the Secretary of the Interior directed to report to Congress the estimated cost of such storage works.

Last year the Reclamation Service imposed a charge of $1 per acre upon the Yakimas for water for irrigation, when in fact the Indians had been using the river water for years. It may be that the unbiased investigator would be inclined to consider this a species of coercion in order to secure acquiescence of the desire of the Government that they should give up their right to 60 acres out of 80 acres of their allotment, accepting a 20-acre water right in full of their allotment of irrigated land. Another inducement held out to the Yakimas to give up title to all land alloted in excess of 20 acres was that if they would do so they would be adjudged competent Indians and be granted authority to lease their own and their minor children's allotments. It may be questioned that whether or not the Indian has not shown the greatest competency by refusing to give up three-fourths of his allotment of 80 acres.

The Government is urging acceptance by the Indians of its civilization. If these wards of Government accept in good faith, then surely we can not expect them to merely exist. A higher standard of living to which they are invited is correlative with greatly increased expenses. The shibboleth of the allotment plan of the Government may be said to be that the Government reserves in trust sufficient land for the untutored allottee to meet his needs after he has adopted our civilization at the termination of the 25-year trust rather than at its beginning.

S. M. Brosius,
Agent, Indian Rights Association.

Washington, D. C., *October 23, 1912.*

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